



U.S. Department of Justice

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July 11, 2001

Steven D. Gordon, Esquire
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Re: United States v. David Nuyen
Criminal No. DKC-2001-0134 (D.MD)

United States v. David Nuyen
Criminal No. DKC-2001-0370 (D.MD)

United States v. David Nuyen
Criminal No. _____ (D.D.C.)

Dear Counsel:

This letter confirms the plea agreement which has been offered to your client, David D. Nuyen, by the United States Attorney's Office for the District of Maryland, the United States Attorney's Office for the District of Columbia, and the Environmental Crimes Section of the Department of Justice (collectively referred to as the "United States" or the "government") pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

GUILTY PLEA

1. Your client, David D. Nuyen, agrees to:

(A) plead guilty to Counts 1, 3, 4, 7, and 9 of the pending Indictment in the District of Maryland, Criminal Case No. DKC-2001-0134, charging obstruction of an agency proceeding being conducted by the Department of Housing and Urban Development into the defendant's compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d ("Lead Hazard Reduction Act"), in violation of 18 U.S.C. § 1505, and representative substantive counts of making and using materially false lead paint disclosure forms required under the Lead Hazard Reduction Act, in violation of 18 U.S.C. § 1001;

(B) waive Indictment and plead guilty in the District of Maryland to the Criminal Information, Criminal Case No. DKC-2001-0370, filed this same date charging the defendant with one count of making a materially false statement to the Department of Housing and Urban Development in an Application for Approval to become a federally insured loan originator, in violation of 18 U.S.C. § 1001; and

(C) plead guilty pursuant to Rule 20 of the Federal Rules of Criminal Procedure to a Criminal Information filed this same date in the District of Columbia charging the defendant with one count of the Toxic Substances Control Act, 15 U.S.C. § 2615, based upon a violation of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d ("Lead Hazard Reduction Act") and Real Estate Notification and Disclosure Rule ("Lead Disclosure Rule"), Title 40, Code of Federal Regulations, Sections 745.107(a)(1) and 745.113(b)(1).

Your client admits that he is in fact guilty of these offenses, admits that the attached Joint Factual Statement dated this same day is accurate to the best of his knowledge, and agrees to so advise the Court.

2. The maximum sentence provided by statute for each of the offenses charged in the pending Indictment and Criminal Information in the District of Maryland to which your client is pleading guilty is as follows: imprisonment for five (5) years, followed by a term of supervised release of up to three (3) years, and a fine of \$250,000.00, or the greater of twice the pecuniary gain derived from the offense or twice the pecuniary loss caused to victims of the crime. 18 U.S.C. § 3571(d). The maximum sentence provided by statute for the offense charged in the Criminal Information in the District of Columbia is as follows: imprisonment for up to one (1) year, followed by a term of supervised release of up to one (1) year, and a fine of \$25,000 per day of violation pursuant to 15 U.S.C. § 2615(b), or a fine of \$100,000.00, or the greater of twice the pecuniary gain derived from the offense or twice the pecuniary loss caused to victims of the crime. 18 U.S.C. § 3571(d). In addition, your client must pay \$50.00 as a special assessment for each of the counts of conviction under 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. Pursuant to 18 U.S.C. Section 612, if the Court imposes a fine in excess of \$2,500 which remains unpaid fifteen (15) days after it is imposed, your client shall be charged interest on the fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. Section 3612(f)(3). If a fine is imposed, it shall be made payable immediately unless, pursuant to 18 U.S.C.

Section 3572(d), the Court provides for the payment of the fine on a date certain or in installments. The Court may also require your client to make full restitution pursuant to 18 U.S.C. §§ 3663 and 3664.

3. Pursuant to Rule 20(a), the defendant waives venue in the District of Columbia as to the Criminal Information filed this same day in that district and agrees that the plea and sentencing will be properly conducted in the District in Maryland.

SENTENCING GUIDELINES

4. Your client understands that, subject to the provisions of Fed. R. Crim. Proc. 11(e)(1)(C) as detailed in Paragraph 8, below, a sentencing guideline range for this case will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. Sections 3551 through 3742 and 28 U.S.C. Sections 991 through 998, and that the Court will impose a sentence within that guideline range, unless the Court finds there is a basis for a departure because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines, which should result in a sentence different from the guideline range.

SENTENCE RECOMMENDATION

5. The United States and your client understand, agree and stipulate to the following applicable sentencing guideline factors. The parties stipulate and agree that the appropriate base offense level and adjustments under the Sentencing Guidelines are as follows:

- (a) The base offense level is twelve (12), pursuant to Section 2J1.2;
- (b) The offense level is increased by three (3) levels because the conduct involved a substantial interference with the administration of justice, including the unnecessary expenditure of substantial governmental and court resources, pursuant to Section 2J1.2(b)(2);
- (c) The offense level is further increased by two (2) levels because the defendant obstructed the investigation of his obstruction, pursuant to Section 3C1.1;
- (c) The offense level is further increased by two (2) levels because the defendant was an organizer, leader, manager, and supervisor of extensive criminal activity, pursuant to Section 3B1.1(b); and
- (d) Thus the total offense level is nineteen (19). The offense level is reduced by two levels on account of the defendant's belated acceptance of responsibility, pursuant to Section 3E1.1(a), for a final offense level of seventeen (17).

6. Your client understands that, subject to Paragraph 8, there is no agreement as to his criminal history or criminal history category, as that cannot be conclusively determined at this time given incomplete criminal history disposition information, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income. Specifically, your client understands that the stipulation as to the applicable offense level set forth above may become inoperative if he is determined to be a career offender under the sentencing guidelines and the applicable law.

7. The parties stipulate and agree that no other sentencing guideline characteristics, adjustments or departures apply, other than as set forth in this agreement.

8. In return for the complete fulfillment by your client of all of his obligations under this agreement, and pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the United States and defendant David D. Nuyen stipulate and agree that the following is the appropriate disposition of this case and jointly recommend that it be approved by the Court: the defendant will be sentenced to twenty-four (24) months incarceration under an Offense Level 17, Criminal History Category I, under the Sentencing Guidelines. In the event that the Court rejects this plea agreement, either party may elect to declare the agreement null and void. Should your client so elect, he will be afforded the opportunity to withdraw his plea pursuant to the provisions of Fed. R. Crim. Proc. 11(e)(4).

9. (a) At the time of sentencing, the United States is free to recommend a criminal fine up to and including the maximum possible fine, and is free to recommend community service. The defendant is free to oppose any such recommendation as to fine or community service. The defendant David D. Nuyen and the United States understand and agree that the Court's imposition of a fine or community service as part of the sentence is not subject to the provisions of Fed. R. Crim. Proc. 11(e)(1)(C), and that neither the United States nor Mr. Nuyen may withdraw from the plea based upon the imposition of a fine or community service, or failure to do so, on the part of the Court.

(b) At the time of sentencing the United States will bring to the Court's attention, and the Court will be entitled to consider, all relevant information concerning your client's background, character and conduct. Your client understands that the United States may comment on the evidence and circumstances of the case and bring to the Court's attention all facts relevant to sentencing (including facts relating to related offenses and the character of the defendant). The parties reserve the right to rebut any statement made by or on behalf of the opposing party at sentencing. Nothing in this plea agreement shall limit the government in its comments in, and responses to, post-sentencing actions, including appeals, motions to correct or review sentences, as set forth in Title 18, United States Code, Section 3742(b), or habeas corpus petitions.

10. It is an express condition of this plea agreement that your client shall comply with the following requirements:

- (a) Prior to the time of sentencing, your client agrees to provide a new and accurate lead paint disclosure form and EPA approved lead hazard pamphlet entitled “Protect Your Family from Lead in Your Home” to every tenant in every rental property owned, controlled or managed by the defendant in Maryland and in the District of Columbia in Spanish and in English. The defendant further agrees as part of this effort to post a copy of the lead paint disclosure form and the EPA pamphlet in a prominent common space in each building.
- (b) Prior to the time of sentencing, your client further agrees not to transfer ownership of any rental property in Maryland or the District of Columbia subject to his ownership, control or management without prior approval of the United States.
- (c) Within thirty (30) days of the entry of guilty pleas pursuant to this agreement, the defendant shall engage the services of an outside and independent contractor with expertise and certification in lead abatement, subject to the approval of the United States, to perform an assessment of the presence of lead-based paint and lead-based paint hazards at all rental properties owned, controlled or managed by the defendant in Maryland and in the District of Columbia. The defendant shall seek to assure that the independent contractor prepare a plan and cost estimate for the abatement of all lead-based paint through removal or encapsulation and to provide that plan and cost estimate to the defendant and to United States not later than ninety (90) days from the date of entry of guilty pleas pursuant to this agreement, except if good cause is shown by the defendant for extending this deadline.
- (d) Within thirty (30) days of the entry of the guilty pleas pursuant to this agreement, the defendant shall submit a signed statement to the United States setting forth all rental properties subject to his ownership, control or management.
- (e) Within sixty (60) days of the entry of the guilty pleas pursuant to this agreement, the defendant shall cooperate with the U.S. Probation Office in evaluating his personal and business finances, including but not limited to submitting a signed statement to the U.S. Probation Office disclosing all assets, all personal assets and accounts, all business and corporate assets and accounts subject to his ownership, control or management, and the last three years of federal and state tax returns, and extant financial statements since January 1, 2000, for the defendant and all businesses and corporations subject to the defendant’s ownership, control or management.

11. Your client expressly understands that the Court is not a party to this agreement. In the federal system, sentence is imposed by the Court, the Court is under no obligation to accept this plea agreement. In the event the court rejects this agreement, pursuant to Rule 11(e)(4) of the Federal Rules of Criminal Procedure, your client will be informed that he may withdraw his plea. If he persists in the guilty plea thereafter, your client understands that the disposition of the case may be less favorable than that contemplated by this agreement. This agreement does not affect the Court's discretion to impose any lawful

term of supervised release or fine or to set any lawful conditions of probation or supervised release. The defendant understands and agrees that he may not withdraw his guilty plea or withdraw from this agreement based upon any fine, conditions of probation or supervised release, order of restitution or community service imposed by the Court.

12. If your client fails in any way to fulfill completely each and every one of his obligations under this agreement, including paragraphs 10(a) – 10(e), then, at the option of the United States, the government will be free to (a) withdraw from this agreement and to allow the defendant to withdraw from his guilty plea; (b) prosecute him for perjury, false declaration, false statement and/or obstruction of justice; and (c) to charge him with other offenses, if any, that he has committed. Whether or not your client has violated the terms of this agreement shall be determined by the Court in an appropriate proceeding at which his disclosures and documents shall be admissible and at which the United States shall be required to establish his breach by a preponderance of the evidence.

13. Nothing in this agreement shall be construed to protect your client in any way from prosecution for perjury, false declaration or false statement, in violation of 18 U.S.C. §§ 1621, 1623 or 1001, obstruction of justice, in violation of 18 U.S.C. §§ 1503, 1505, 1510, or 1512, any crime of violence, or any other offense committed by him after the date of this agreement.

ADDITIONAL LIABILITY

14. In exchange for defendant's guilty plea and admission of guilt, the United States will, at the time of sentencing, move to dismiss the remaining counts of the Indictment pending against your client, other than the counts to which he has agreed to plead guilty.

15. The parties agree that in exchange for the defendant's guilty plea and admission of guilt, and provided that the defendant complies with the terms of this agreement, the United States also agrees to forego additional criminal prosecution in the District of Maryland and the District of Columbia against defendant for the charges set forth in the Indictment and Criminal Informations, for other criminal violations of the Lead Hazard Reduction Act, the Toxic Substances Control Act, or violations of 18 U.S.C. §§ 1001, 1503, 1505, 1512, 1621, 1622 and 1623 that took place prior to the date of this agreement and which are known to the government. The United States also agrees to forego additional prosecution against the defendant in the District of Maryland for false statements or mortgage fraud relating to false loan information submitted to private and federal financial institutions prior to the date of this agreement. The parties further understand that this agreement only applies to federal criminal charges in the District of Maryland and the District of Columbia and that neither this paragraph nor this agreement limits the authority of any sections or divisions of the Department of Justice, including any U.S. Attorney's Office, or any other federal, state or local regulatory or prosecuting authorities. This agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, suspension, debarment, listing, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement.

WAIVERS

16. Pursuant to this plea agreement, the defendant agrees to enter unconditional pleas of guilty to the aforementioned counts of the Indictment in the District of Maryland and the Criminal Information in the District of Columbia. By pleading guilty, your client waives and agrees to waive any and all motions, defenses, objections, or requests which have been made or which could have been made in this case. Your client waives his constitutional and statutory rights to a speedy trial and trial by jury (or by a judge if the defendant is tried by a judge alone). Your client also specifically waives his right to be charged by Indictment and further waives any challenges to the Criminal Information in the District of Maryland and the Criminal Information in the District of Columbia, including jurisdiction, venue, multiplicity and duplicity. Your client waives and agrees to waive any rights under the Speedy Trial Act, and he understands that his sentencing may be delayed until his cooperation has been completed so that at sentencing the court will have the benefit of all relevant information.

17. Your client and the United States knowingly and expressly waive all rights conferred by 18 U.S.C. Section 3742 to appeal any sentence imposed, reserving only the right to appeal from an upward or downward departure from the guideline range and the unlawful imposition of any sentence. Nothing in this agreement shall be construed to prevent either your client or the United States from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximums allowed under the law or that is less than any applicable statutory minimum mandatory provisions.

18. Your client agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-119 (November 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the investigation and/or prosecution of this matter including all charges in the Information related to the above captioned matter and any related allegations including without limitation any charges to be dismissed pursuant to this plea agreement.

BINDING FINAL AGREEMENT

19. This letter states the complete plea agreement in this case. There are no other agreements, promises, undertakings or understandings between your client and the United States. None of the terms of this agreement shall be binding on the United States until this agreement is signed by you and your client and until signed by the U.S. Attorneys for the District of Maryland and the District of Columbia or his designees. It is further understood and agreed that this plea agreement is the only agreement between the United States and your client concerning this plea agreement and the Information, and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in a writing that is signed by all parties. No other promises or inducements have been or will be made to the defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

If your client fully accepts each and every term and condition of this letter, please sign and have your client sign the original and return it to me promptly.

Very truly yours,

Stephen M. Schenning
United States Attorney

By:

Richard A. Udell
Special Assistant U. S. Attorney

By:

W. Warren Hamel
Assistant U.S. Attorney
District of Maryland

Kenneth L. Wainstein
United States Attorney
District of Columbia
D.C. Bar # 451058

By:

William M. Blier
Assistant U.S. Attorney
District of Columbia
D.C. Bar # 414546

Richard A. Udell
Senior Trial Attorney
Environmental Crimes Section
U.S. Department of Justice

I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it.

Date

David D. Nuyen

We are Mr. Nuyen's attorneys. We have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

Date

Steven D. Gordon, Attorney for the Defendant

Date

James H. Rodio, Attorney for the Defendant